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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/458,322

12/10/1999

STEPHEN J. ZACK

533/198

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08/14/2006

PATTERSON & SHERIDAN, LLP/
SEDNA PATENT SERVICES, LLC
595 SHREWSBURY AVENUE
SUITE 100
SHREWSBURY, NJ 07702

EXAMINER

HUYNH, SON P

ART UNIT

PAPER NUMBER

2623

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/458,322	Applicant(s) ZACK ET AL.	
	Examiner Son P. Huynh	Art Unit 2623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 32-44.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant argues Mao and Wu fail to teach, disclose or suggest "predicting future bandwidth availability based on the statistical multiplexing of the formatted content stream; and selectively multiplexing formatted non-content data into said output stream on a future bandwidth availability basis." (Page 7, paragraphs 2-3).

In response, this argument is respectfully traversed. Wu discloses the bandwidth allocation is assigned to Opportunistic Data Processor (ODP) for providing formatted opportunistic data after the bandwidth for encoded source data is calculated and available/spare bandwidth is determined (i.e. spare bandwidth is available/quantization level less than the threshold). The ODP provides formatted opportunistic data for multiplexing only after the available/spare bandwidth is determined and bandwidth allocation for formatted opportunistic data is received. The TSPs also provide encoded source data for multiplexing after bandwidth allocations are assigned (col. 2, lines 13-38; col. 4, lines 38-47, col. 5, lines 10-52, col. 6, lines 17-27). Therefore, the claimed feature "predicting future bandwidth availability based on the statistical multiplexing of the formatted content" is broadly met by after calculating the bandwidth for encoded source data, predicting/assigning bandwidth allocation for formatted opportunistic data to be multiplexed later into the stream; the claimed feature "selectively multiplexing formatted non-content data into said output stream on a future bandwidth availability basis" is broadly met by selectively multiplexing formatted opportunistic data into the bandwidth allocation for later multiplexing the formatted opportunistic data into the stream; wherein the encoded source data read on claimed "formatted content", formatted opportunistic data read on claimed "formatted non-content data"; determining/calculating available/spare bandwidth and providing bandwidth allocation for later multiplexing formatted opportunistic data into the stream after calculating bandwidth for encoded source data broadly read on predicting "future bandwidth availability".

Applicant's further argues providing data after bandwidth determination/allocation as taught by Wu is not equivalent to predicting future bandwidth availability of the present invention. Wu does not calculate, determine, forecast, estimate, anticipate or predict what the bandwidth condition will be like in the future and multiplex data with respect to that prediction. (page 9, paragraph 2).

In response, this argument is respectfully traversed. Wu discloses Wu discloses the bandwidth is allocated to the opportunistic data processor only when the global quantization level is less than the threshold quantization level, or available (see including, but are not limited to, col. 2, lines 31-42; col. 4, lines 44-47, col. 5, lines 1-51). Thus, bandwidth condition (i.e. level less than threshold.../spare bandwidth is available) must be calculated, determined, or predicted. For example, the future bandwidth availability for opportunistic data is predicted as zero if there is no spare bandwidth is available; the future bandwidth availability for opportunistic data is predicted as greater than zero if spare bandwidth is available or the global quantization level less than the threshold. Therefore, the claimed feature "predicting future bandwidth availability" is broadly interpreted as predicting bandwidth availability for providing opportunistic data later (i.e. after bandwidth is allocated).

For the reason given above, rejections on claims 32-44 are maintained as discussed in Final Office Action mailed 06/12/2006.